



Santa Clara Law Review

Volume 14 | Number 3

Article 2

1-1-1974

Introduction

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Recommended Citation

Warren G. Magnuson, Other, *Introduction*, 14 SANTA CLARA LAWYER 452 (1974).

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INTRODUCTION

Senator Warren G. Magnuson*

Consumerism, unlike other "ism's", is not a philosophical movement. It is the campaign of the common man demanding of society certain rights in his day-to-day dealings in the marketplace. In the beginning, consumerism was the product of frustration—frustration with shoddy goods and empty promises of satisfaction; frustration with unresolved complaints and faceless computers; and above all, frustration with the inflated dollar spent for deflated value. Consumerism was also the child of anger—anger directed at slippery Madison Avenue tricks of deception and confusion; and anger at the polished behavioral and psychological techniques that turned children into programmed buying agents instead of programmed learners.

At the heart of this movement lies an overriding sense of injustice and betrayal of our faith in the integrity not only of business and government, but also of our society and its institutions. In the early 1960's, however, the focus of the consumer movement was on the failure of business. Detroit, the embodiment of all industry, had been our pride, and the open highway the symbol of the American dream. But, by the mid 1960's, when the dream became clouded by smog and dimmed by the wreckage of machines and lives, Detroit refused to pull up its shirtsleeves and direct its energies to the development of safe, pollution free cars. Instead, it attacked its critics, minimized its failures, silenced internal dissent, muffled competition, and resisted change; consequently, the faith of the American consumer was shaken.

With this demonstration of Detroit's recalcitrance and the revelation of abuses not only by fly-by-nighters but also by the cream of American industry, the task of the nation's legislators became quite clear: first, strengthen the marketplace by restoring healthy competition with laws which set firm, fair rules of play; and second, procure for the consumer assurance of what President John F. Kennedy denominated as "the four basic consumer rights":

1. the right to safety;

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2. the right to be informed (and not to be misinformed);
3. the right to choose; and,
4. the right to be heard.

These four rights now constitute the matrix of the modern consumer movement. This symposium highlights both the success and failure of attempts to implement these basic rights; rights which have served for more than a decade to focus legislative light on the dark side of the marketplace.

1. *The right to safety*

In sharp contrast to the federal government's single minded concern with the safety of food and drugs over the last fifty years, today Congress has legislated against thousands of products which have been found to present hidden dangers for unsuspecting consumers—products ranging from children's sleepwear to cigarettes.

My first involvement in consumer safety legislation dates back to 1953, when the Congress took steps to remove extremely flammable garments (such as torch sweaters and cowboy chaps which virtually exploded when exposed to as innocuous an ignition source as static electricity) from the market. At that time I listened to industry argue that voluntary action could solve the problem. Instead of creating a comprehensive flammable fabrics act, the Congress established a minimum flammability standard and an industry advisory committee to make recommendations for improvements. It was not until 1967, when I introduced amendments to make the Flammable Fabrics Act a comprehensive flammability safety law, that the advisory committee first met. Their solution to the problem was to let industry voluntarily regulate itself.

Despite the assurances of industry, the Congress continued to see children poisoned by household products and the safety of individuals threatened by manufacturers who failed to meet their pledges of public responsibility. In 1960, Congress passed the Federal Hazardous Substances Labeling Act,¹ and in 1967, the Act was improved by adding special protections for objects used by children.²

The creation and enactment of consumer programs has not always meant satisfaction for the legislative sponsors of such programs. For example, for many years the Department of Commerce made meager inroads into the problem of flammable fabrics. When

1. The Federal Hazardous Substances Labeling Act, 15 U.S.C. §§ 1261-74 (1970), as amended 15 U.S.C. § 2079(a) (Supp. 1972).

2. The Child Protection Act of 1966, 15 U.S.C. §§ 1261-65, 1273 (1970), amending 15 U.S.C. §§ 1261-74 (1970).

flammability standards for children's sleepwear were finally enacted in 1972,³ the standard applied only to garments sized 0 to 6X. Less than two weeks later, a child was fatally burned in her flannel nightgown—size 10. Furthermore, while the Senate accepted my amendment to expand the standard to size 14 the House rejected the action, and it was not until recently that a new federal agency took positive steps to achieve expansion of the Act's coverage.⁴

"Satisfaction guaranteed" may not be the watchword of this nation's legislature, but progress in this and in other areas is finally more than a pipedream. In 1972, after four long years of study, the Consumer Product Safety Act⁵ was signed into law establishing an independent agency to insure the reasonable safety of all consumer products in the marketplace. Nominees for the top five Commission spots have been carefully scrutinized for both technical competence and personal integrity, and the White House's insistence on approving the appointments of high ranking non-career executives is being investigated in order to free the Commission from the political interference that has plagued other federal agencies.

Since the passage of the Consumer Product Safety Act, new legislation has been proposed to upgrade motor vehicle safety,⁶ radiation safety,⁷ and fire safety.⁸ The fine tuning of all of this legislation will surely demand long hours of analysis for many years to come by those of us in Congress who are dedicated to consumer protection. As Franklin D. Houser points out in this symposium, despite all the protections of the fourteen-year-old Hazardous Substances Labeling Act,⁹ "defectively labeled products are still causing and will continue to cause untold thousands of deaths and injuries each year." Houser notes that although the protections are there, consumer education is not. "Strong, effective warnings and instructions that communicate the hazards of foreseeable and unforeseeable use of products provide the only hope" if "increased enforcement, agency pressure, and civil liability are to awaken the 'sleeping giant.'"

3. The Flammable Fabrics Act, 15 U.S.C. § 1191 *et seq.*

4. See 39 Fed. Reg. 15210 *et seq.* (1974).

5. The Consumer Product Safety Act, 15 U.S.C. § 2051-81 (Supp. 1972).

6. S. 355, 93d Cong., 1st Sess. (1973), which would amend the Motor Vehicle and Cost Savings Act, 15 U.S.C. 1901-91 (Supp. 1972), was passed in the Senate on May 17, 1973. It is pending in the House of Representatives.

7. S. 667, 93d Cong., 2d Sess. (1974), which would amend the Radiation Control for Health and Safety Act of 1968, 15 U.S.C. § 263b-n (1970), has been proposed in the Senate.

8. S. 1769, 93d Cong., 2d Sess. (1974), which would amend the Fire Research and Safety Act of 1968, 15 U.S.C. §§ 278f, 278g (1970), has been proposed in the Senate.

9. The Federal Hazardous Substance Labeling Act, 15 U.S.C. §§ 1261-74 (1970), as amended 15 U.S.C. § 2079(a) (Supp. 1972).

2. *The right to be informed*

In 1966 with the passage of the Fair Packaging and Labeling Act (FPLA),¹⁰ Congress gave consumers a mechanism by which they could inform themselves about products in the marketplace, especially those found in the supermarket. FPLA required manufacturers for the first time to disclose the net quantity of contents on packages as well as the name of the manufacturer.

By use of an unusual but constructive interpretation of legislative intent, the FPLA has recently been extended to require the listing of ingredients on the labels of cosmetic products. Health considerations have dictated the disclosure of those ingredients to which a large number of consumers may be sensitized, but value comparisons among competing products have only recently been perceived to be dependent upon full ingredient disclosures. The concept is simple enough—with accurate information the consumer is in a better position to spend his shopping dollar wisely. Recognition of this principle has been the result of a long and fiercely fought battle in the legislative as well as the administrative arena, as Ronald G. Fischer so carefully recounts. Goaded by the increasing demands of a “period of heightened consumer consciousness”, a *quality* of contents orientation has been added to the FPLA’s former *quantity* of contents approach.

Sheldon Feldman, in his article *The Fair Credit Reporting Act—From the Regulator’s Vantage Point*, argues that the Act “has not been effective in correcting certain abuses or changing certain practices largely because these problems were not considered or known at the time of enactment” But in spite of these shortcomings, there is no need to “scrap” the Act because it can serve as “a framework for comprehensive legislation.” Witnessing this case, as well as many others, Congress has learned that effective consumer protection initiatives can be developed only as enforcement agencies gain experience with compliance requirements and relay that experience to Congress with recommendations for improvements in the law. With Congressional supervision we can “tune in”, and with administrative experience we can attempt to make sure consumers are not “tuned out.”

3. *The right to choose*

Inextricably entwined with the right to be informed is the right to choose, for information is the only means by which informed choice can be assured. Consumer information comes in many shapes and sizes, from the hang tag on a household appliance

10. Fair Packaging and Labeling Act, 15 U.S.C. §§ 1451-61 (1970).

to the credit lesson on the back of a monthly billing statement. Perhaps the most significant legislation promoting the consumer's right to be informed and, thus his right to choose, is the legislation dealing with cigarettes and advertising. Congress initially established standards requiring warnings to be placed on cigarette packages to alert consumers to the dangers presented by cigarettes. Recognizing the power of the electronic media in persuading people to smoke, Congress also enacted legislation to prevent the advertising of cigarettes on television and radio.

The recently enacted Motor Vehicle Information and Cost Savings Act,¹¹ which I sponsored, will inform car buyers as to the crash worthiness, damage susceptibility, and repairability of motor vehicles which they intend to purchase. For the first time, the consumer will have the information to tell him which cars are the safest, which cars are the least susceptible to damage and, therefore, which offer the lowest insurance premiums in addition to the lowest cost of maintenance.

Were I to suggest that comparison shopping is only of importance in the consumer goods market, however, I would do an injustice to the millions of consumer service transactions that occur every day. Growth in the credit industry has reached staggering proportions and, up until 1968, public ignorance of credit terms seemed to keep pace. With the passage of the Truth-in-Lending Act,¹² the consumer was finally given the information with which to shop, as Griffith Garwood indicates in his article, for "the best credit terms in the same way he could shop for the best buys when making cash purchases." Again, despite this Act's carefully-developed provisions, administrative enforcement experience has shown that the law needs considerable refinement. Its impact has recognizably been "far better than its most vocal proponents predicted," but, Garwood notes that disclosure requirements have been difficult to phrase in light of the complexity and variety of credit offerings and, more importantly, that there is little reason to believe that these difficulties will diminish in the future.

4. *The right to be heard*

Perhaps the area in which we have the greatest distance to travel is the right to be heard. Within the Department of Commerce we have a business ombudsman but there is no advocate to represent the consumers' interest in the federal agency decision-making processes. Positive action on a bill now before Congress

11. Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1901-91 (Supp. 1972).

12. Truth in Lending Act, 15 U.S.C. §§ 1601-65 (1970).

which would create a Consumer Protection (or Advocacy) Agency is becoming increasingly critical in light of recent Watergate revelations. Such legislation could have been responsive to a variety of abuses uncovered by the Congress. Had an independent agency advocate been charged with overseeing the decision-making policies of other federal agencies, several governmental failures such as the Department of Commerce's delayed carpet flammability standards, the Agricultural Department's Russian wheat deal, and the Department of Transportation's unenforced tire quality grading regulations might have been avoided.

Where do we go from here? An important consumer measure which died in the last session of Congress is the Consumer Product Warranties and Federal Trade Commission Improvements Act.¹³ The bill was designed to protect the consumer's right to be informed by requiring full and complete disclosure of all warranty terms and to promote the consumer's right to choose by creating a federal warranty standard insuring the free repair or replacement of products within a reasonable time.

The same bill also improved significantly the Federal Trade Commission's arsenal for fighting against unfair and deceptive trade practices in the marketplace. I note in Ralph Swanson's comment, *Toward an End to Consumer Frustration—Making the Song-Beverly Consumer Warranty Act Work*, that many of the same issues have been grappled with by legislators in California. California's special attention to various theories of warranty law such as the implied warranty, the procedure for effective disclaimer, and the prospective guarantee of merchant ability, all of which Mr. Swanson discusses, provides an innovative approach to continuing abuses in the warranty field and perhaps a scenario from which creative additions to federal legislation may be gleaned.

Despite the claims of some of my colleagues both within and without the legal profession, the modern consumer movement is not radical or revolutionary. Quite the contrary, it is conservative insofar as it places its faith in a free enterprise system which is governed by the rational choices of consumers in the marketplace. Because of changes in our economic system it has been necessary for the government to intercede on behalf of the consumer to insure his sovereignty in the marketplace. The modern consumer movement has sought to secure laws which will protect the consumer's rights so that his choices may continue to govern the free market economy. To the extent that the consumer movement reserves,

13. It should be noted that the bill, S. 356, 93d Cong., 1st Sess. (1973), was passed by the Senate on September 12, 1973. It is now before the House of Representatives (H.R. 7917, 93d Cong., 1st Sess. (1973)).

or in some cases restores, consumer sovereignty in the marketplace, the free market system will endure.

But laws, even the best of laws, are meaningless where the government lacks the resources, the commitment, and the integrity to enforce them vigorously and even-handedly. Government must not only bear the responsibility for enforcing the laws, it must create a climate of integrity in which the highest standards of ethical behavior are set as well as demanded. This is where our present government has failed.

It is my firm belief that by securing the consumer's right to safety, his right to be informed, his right to choose, and his right to be heard, this nation will grow and prosper in such a way as to benefit each and every one of us. Then the consumer will again place his faith in his government and the men and women that carry out the law. Consumerism as a philosophy is a basic reflection of the democratic ideal, and it is to this ideal that we must pledge ourselves again with renewed hope and commitment.